

**SENATE JOURNAL
63RD LEGISLATURE
THIRTY-THIRD LEGISLATIVE DAY**

Helena, Montana
February 14, 2013

Senate Chambers
State Capitol

Senate convened at 1:02 p.m. President Essmann presiding. Invocation by Father Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

BILLS AND JOURNALS (Buttrey, Chair):

2/14/2013

Correctly printed: **SB 114, SB 196, SB 238, SB 252, SB 298, SB 299, SB 300, SB 301, SB 302, SB 303, SB 304, SB 305, SB 306, SB 307, SJR 14, HB 63, HB 114, HB 155, HB 164.**

Correctly engrossed: **SB 58, SB 81, SB 107, SB 139, SB 166, SB 176, SB 189, SB 192, SB 195, SB198, SB 201, SB 212, SB 230.**

Transmitted to the House: **SB 9, SB 106, SB 149, SB 225, HB 40, HB 52, HB 148.**

Signed by the Secretary of the Senate at 2:45 p.m., February 13, 2013: **SB 111.**

Signed by the President at 10:30 a.m., February 14, 2013: **SB 111.**

Signed by the Speaker at 11:40 a.m., February 14, 2013: **SB 111.**

Delivered to the Governor for approval at 3:00 p.m., February 14, 2013: **SB 111.**

REPORTS OF STANDING COMMITTEES

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Sonju, Chair):

2/14/2013

SB 212, introduced bill, be amended as follows:

1. Page 3, line 3.

Following: "motor vehicle,"

Insert: "equipment,"

2. Page 3, line 6.

Insert: "motor vehicle,"

Insert: "equipment,"

And, as amended, do pass. Report adopted.

SB 230, introduced bill, be amended as follows:

1. Title, page 1, line 6.

Following: "AUTHORITY;"

Insert: "AND"

2. Title, page 1, line 7.

Strike: "; AND PROVIDING" through "DATE"

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3. Page 1, line 13.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

4. Page 1, line 26.

Following: "means"

Strike: "an"

Insert: "a trained"

5. Page 4, line 20.

Strike: section 6 in its entirety

And, as amended, do pass. Report adopted.

HB 94, be concurred in. Report adopted.

JUDICIARY (Murphy, Chair):

2/14/2013

SB 107, introduced bill, be amended as follows:

1. Title, page 1, line 6.

Strike: "46-18-205,"

2. Page 19, line 25 through page 20, line 20.

Strike: section 7 in its entirety

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

SB 176, introduced bill, be amended as follows:

1. Page 4, line 25.

Following: "includes"

Insert: "but is not limited to"

2. Page 4, line 26.

Strike: "without a meeting"

Insert: "provided electronically or"

And, as amended, do pass. Report adopted.

SB 198, introduced bill, be amended as follows:

1. Title, page 1, line 5.

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Strike: "SECTION"

Insert: "SECTIONS"

Following: "45-5-212"

Insert: "AND 46-18-111"

2. Page 1, line 17.

Following: "minor"

Strike: remainder of line 17 through line 18

Insert: ": (i) for a first offense under this subsection (2)(b) shall be imprisoned in a state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both; or
(ii) for a second or subsequent offense under this subsection (2)(b) shall be imprisoned in a state prison for a term not to exceed 20 years or be fined not more than \$50,000, or both."

3. Page 1, line 20.

Following: "victim"

Strike: remainder of line 20 through line 21

Insert: ": (i) for a first offense under this subsection (2)(c) shall be imprisoned in a state prison for a term not to exceed 20 years or be fined not more than \$50,000, or both; or
(ii) for a second or subsequent offense under this subsection (2)(c) shall be imprisoned in a state prison for a term not to exceed 40 years or be fined not more than \$50,000, or both."

4. Page 1, line 21.

Following: line 21

Insert: "(3) An offender convicted of an offense under subsection (2)(b) or (2)(c) shall pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency and complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court and be a person licensed under Title 37, chapter 17, 22, or 23, or a professional person as defined in 53-21-102. The offender shall complete a minimum of 40 hours of counseling."

5. Page 1, line 22

Insert: "**Section 2.** Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant

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in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(c) If the defendant was convicted of an offense under 45-5-212 (2)(b) or (2)(c), the investigation must include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

~~(c)~~(d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

6. Page 1, line 23.

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

TAXATION (Tutvedt, Chair):

2/13/2013

HB 36, be concurred in. Report adopted.

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HB 152, be concurred in. Report adopted.

HB 192, be concurred in. Report adopted.

MESSAGES FROM THE GOVERNOR

February 13, 2013

Senator Jeff Essmann, President
Montana Senate
Capitol Building
Helena, Montana 59620

Dear President Essmann:

On Wednesday February 13, 2013, I signed the following Senate bills:

SB 46, sponsored by Senator Vuckovich

SB 64, sponsored by Senator Facey

These bills were delivered to the Secretary of State's Office today.

Sincerely,

STEVE BULLOCK
Governor

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/13/2013

HB 105, introduced by Steenberg

HB 158, introduced by Kary

MOTIONS

SB 106 - Senator Caferro moved to change her third-reading vote on **SB 106** from No to Yes. Without objection, so ordered. [Vote change reflected in previous day's journal.]

SB 153 - Senator Thomas moved to take **SB 153** from second reading this date and re-refer it to the Energy and Telecommunications committee. Without objection, so ordered.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

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SB 308, introduced by Olson, referred to Energy and Telecommunications.
SB 309, introduced by Dick Barrett, referred to Taxation.
SB 310, introduced by Wanzenried, referred to Judiciary.
SB 311, introduced by Wanzenried, referred to Judiciary.
SB 312, introduced by Sonju, referred to Energy and Telecommunications.
SB 313, introduced by L. Jones, Hollandsworth, referred to Highways and Transportation.
SB 314, introduced by Wanzenried, referred to Highways and Transportation.
SB 315, introduced by Kaufmann, referred to Public Health, Welfare and Safety.
SB 316, introduced by Fielder, referred to Natural Resources.
SB 317, introduced by L. Jones, Cook, referred to Taxation.
SB 318, introduced by Van Dyk, Miller, referred to Taxation.
SB 319, introduced by Sonju, Arntzen, Hollenbaugh, Lavin, referred to Highways and Transportation.
SB 320, introduced by Vincent, referred to Judiciary.
SB 321, introduced by Thomas, referred to Judiciary.
SB 322, introduced by Thomas, referred to Local Government.
SB 323, introduced by Thomas, referred to Public Health, Welfare and Safety.

The following Senate bills were introduced, read first time, and referred to committees:

SJR 15, introduced by Fielder, Arntzen, Arthun, Augare, Ballance, Debby Barrett, Blyton, Boulanger, Brockie, Brodehl, D. Brown, Buttrey, Clark, Connell, Cuffe, Facey, Flynn, Glimm, Hamlett, Hertz, Hollenbaugh, Howard, Ingraham, Jackson, D. Jones, L. Jones, Kary, Keane, Knudsen, McChesney, McClafferty, Mehlhoff, F. Moore, Murphy, Olson, Peppers, Peterson, Pierson, Price, Redfield, Ripley, Rosendale, Salomon, Schwaderer, Sesso, Shaw, B. Smith, C. Smith, Sonju, Stewart-Peregoy, Taylor, Thomas, Tutvedt, Vincent, Washburn, Webb, White, Whitford, Windy Boy, Wittich, Zolnikov, referred to Natural Resources.
SJR 16, introduced by Debby Barrett, Welborn, referred to Highways and Transportation.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Wittich moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Vincent in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 14 - Senator Wanzenried moved **SB 14** do pass.

SB 14 - Senator Wanzenried moved **SB 14**, second reading copy, be amended as follows:

1. Title, page 1, line 8.
Strike: "RECOVERING"
Insert: "EARNING"

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2. Page 3, line 13.

Strike: "RECOVERING"

Insert: "earning"

Amendment adopted as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jent, Jergeson, Jones, Kaufmann, Keane, Larsen, Lewis, Malek, Moore, Murphy, Olson, Peterson, Phillips, Ripley, Rosendale, Sales, Sesso, Sonju, Stewart-Peregoy, Taylor, Thomas, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Windy Boy, Wittich, Mr. President.

Total 46

Nays: Boulanger, Jackson, Priest, Webb.

Total 4

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 14 - Senator Wanzenried moved **SB 14**, as amended, do pass. Motion carried as follows:

Yeas: Augare, Barrett Dick, Blewett, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jent, Jergeson, Jones, Kaufmann, Keane, Larsen, Lewis, Malek, Moore, Olson, Peterson, Phillips, Ripley, Sesso, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vuckovich, Walker, Wanzenried, Windy Boy.

Total 32

Nays: Arntzen, Arthun, Barrett Debby, Boulanger, Brenden, D. Brown, Jackson, Murphy, Priest, Rosendale, Sales, Sonju, Taylor, Thomas, Vincent, Webb, Wittich, Mr. President.

Total 18

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 81 - Senator Lewis moved **SB 81** do pass.

SB 81 - Senator Lewis moved **SB 81**, second reading copy, be amended as follows:

1. Page 19, line 27.

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Strike: "2017"

Insert: "2019"

Amendment adopted as follows:

Yeas: Arntzen, Barrett Debby, Boulanger, Brenden, D. Brown, T. Brown, Fielder, Jackson, Jones, Lewis, Moore, Murphy, Olson, Peterson, Priest, Ripley, Rosendale, Sales, Sonju, Taylor, Thomas, Vincent, Walker, Webb, Windy Boy, Wittich, Mr. President.

Total 27

Nays: Arthun, Augare, Barrett Dick, Blewett, Buttrey, Caferro, Driscoll, Facey, Hamlett, Jent, Jergeson, Kaufmann, Keane, Larsen, Malek, Phillips, Sesso, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vuckovich, Wanzenried.

Total 23

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 81 - Senator Lewis moved **SB 81**, as amended, do pass. Motion carried as follows:

Yeas: Arntzen, Arthun, Barrett Debby, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Fielder, Jackson, Jones, Lewis, Moore, Murphy, Olson, Peterson, Priest, Ripley, Rosendale, Sales, Sonju, Taylor, Thomas, Tutvedt, Walker, Webb, Wittich, Mr. President.

Total 28

Nays: Augare, Barrett Dick, Blewett, Caferro, Driscoll, Facey, Hamlett, Jent, Jergeson, Kaufmann, Keane, Larsen, Malek, Phillips, Sesso, Stewart-Peregoy, Tropila, Van Dyk, Vincent, Vuckovich, Wanzenried, Windy Boy.

Total 22

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SJR 10 - Senator Windy Boy moved **SJR 10** do pass. Motion carried as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jent, Jergeson, Jones, Kaufmann, Keane, Larsen, Lewis, Malek, Murphy, Olson, Peterson, Phillips, Priest, Sesso, Sonju, Stewart-Peregoy, Thomas, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker,

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Wanzenried, Windy Boy, Mr. President.

Total 42

Nays: Jackson, Moore, Ripley, Rosendale, Sales, Taylor, Webb, Wittich.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 197 - Senator Boulanger moved **SB 197** do pass.

SB 197 - Senator Priest moved **SB 197**, second reading copy, be amended as follows:

1. Page 1, line 17.

Strike: "multiple"

Insert: "3"

Following: "years"

Insert: "before the person must complete a hunter safety and education course pursuant to 87-2-105"

Amendment adopted as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jackson, Jent, Jergeson, Jones, Keane, Larsen, Lewis, Malek, Moore, Murphy, Olson, Peterson, Phillips, Priest, Ripley, Rosendale, Sales, Sesso, Sonju, Stewart-Peregoy, Taylor, Thomas, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Webb, Windy Boy, Wittich, Mr. President.

Total 47

Nays: Kaufmann, Tropila, Wanzenried.

Total 3

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 197 - Senator Boulanger moved **SB 197**, as amended, do pass. Motion carried as follows:

Yeas: Arntzen, Arthun, Augare, Boulanger, Brenden, T. Brown, Buttrey, Caferro, Facey, Fielder, Hamlett, Jackson, Jent, Jones, Lewis, Moore, Murphy, Olson, Peterson, Priest, Ripley,

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Rosendale, Sales, Sonju, Stewart-Peregoy, Taylor, Thomas, Tutvedt, Van Dyk, Vincent, Walker, Webb, Wittich, Mr. President.
Total 34

Nays: Barrett Debby, Barrett Dick, Blewett, D. Brown, Driscoll, Jergeson, Kaufmann, Keane, Larsen, Malek, Phillips, Sesso, Tropila, Vuckovich, Wanzenried, Windy Boy.
Total 16

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 47 - Senator Malek moved **HB 47** be concurred in. Motion carried as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jackson, Jent, Jergeson, Jones, Kaufmann, Keane, Larsen, Lewis, Malek, Moore, Murphy, Olson, Peterson, Phillips, Priest, Ripley, Rosendale, Sales, Sesso, Sonju, Stewart-Peregoy, Taylor, Thomas, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Windy Boy, Wittich, Mr. President.
Total 48

Nays: Brenden, Webb.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

Senator Wittich moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Essmann presiding. Chair Vincent moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Fielder, Hamlett, Jackson, Jent, Jergeson, Jones, Keane, Larsen, Lewis, Malek, Moore, Murphy, Olson, Peterson, Priest, Ripley, Rosendale, Sesso, Stewart-Peregoy, Taylor, Thomas, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Webb, Windy Boy, Wittich, Mr. President.
Total 44

Nays: Facey, Kaufmann, Phillips, Sales, Sonju, Wanzenried.
Total 6

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Absent or not voting: None.

Total 0

Excused: None.

Total 0

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 196 passed as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Dick, Blewett, Boulanger, D. Brown, Driscoll, Facey, Fielder, Hamlett, Jent, Jergeson, Jones, Lewis, Moore, Murphy, Olson, Priest, Ripley, Rosendale, Sales, Sonju, Stewart-Peregoy, Taylor, Thomas, Tutvedt, Van Dyk, Vincent, Walker, Wanzenried, Webb, Windy Boy, Wittich, Mr. President.

Total 35

Nays: Barrett Debby, Brenden, T. Brown, Buttrey, Caferro, Jackson, Kaufmann, Keane, Larsen, Malek, Peterson, Phillips, Sesso, Tropila, Vuckovich.

Total 15

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 164 concurred in as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Driscoll, Facey, Fielder, Hamlett, Jackson, Jent, Jergeson, Jones, Kaufmann, Keane, Larsen, Lewis, Malek, Moore, Murphy, Olson, Peterson, Phillips, Priest, Ripley, Rosendale, Sales, Sesso, Sonju, Stewart-Peregoy, Taylor, Thomas, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Webb, Windy Boy, Wittich, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

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Total 0

SB 209 passed as follows:

Yeas: Arntzen, Arthun, Augare, Barrett Debby, Barrett Dick, Blewett, Boulanger, T. Brown, Buttrey, Caferro, Driscoll, Facey, Hamlett, Jackson, Jent, Jergeson, Jones, Kaufmann, Larsen, Lewis, Malek, Moore, Olson, Peterson, Phillips, Priest, Ripley, Rosendale, Stewart-Peregoy, Taylor, Thomas, Tropila, Tutvedt, Van Dyk, Vuckovich, Walker, Wanzenried, Webb, Windy Boy, Wittich, Mr. President.

Total 41

Nays: Brenden, D. Brown, Fielder, Keane, Murphy, Sales, Sesso, Sonju, Vincent.

Total 9

Absent or not voting: None.

Total 0

Excused: None.

Total 0

MOTIONS

Senator Vuckovich moved to reconsider third-reading action on **SB 171** and that **SB 171** be placed on third reading on Friday, February 15, the thirty-fourth legislative day. Motion **failed** as follows:

Yeas: Augare, Barrett Dick, Blewett, Caferro, Driscoll, Facey, Hamlett, Jent, Jergeson, Kaufmann, Keane, Larsen, Phillips, Sesso, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vuckovich, Wanzenried, Windy Boy.

Total 21

Nays: Arntzen, Arthun, Barrett Debby, Boulanger, Brenden, D. Brown, T. Brown, Buttrey, Fielder, Jackson, Jones, Lewis, Malek, Moore, Murphy, Olson, Peterson, Priest, Ripley, Rosendale, Sales, Sonju, Taylor, Thomas, Vincent, Walker, Webb, Wittich, Mr. President.

Total 29

Absent or not voting: None.

Total 0

Excused: None.

Total 0

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Wittich moved that the Senate adjourn until 1:00 p.m., Friday, February 15,

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2013, the thirty-fourth legislative day. Motion carried.

Senate adjourned at 2:49 p.m.

MARILYN MILLER
Secretary of the Senate

JEFF ESSMANN
President of the Senate